

CAUSE NO. CL-19-1591-A

JANE CROSS AND JERRY RIVERA	§	IN THE COUNTY COURT
	§	
	§	
V.	§	AT LAW NO. _____
	§	
RENE GUTIERREZ , INDIVIDUALLY	§	
AND AS REPRESENTATIVE OF	§	
EDINBURG CONSOLIDATED	§	
INDEPENDENT SCHOOL DISTRICT,	§	
AND EDINBURG CONSOLIDATED	§	
INDEPENDENT SCHOOL DISTRICT	§	HIDALGO COUNTY, TEXAS

**PLAINTIFFS' ORIGINAL PETITION AND APPLICATION FOR TEMPORARY
RESTRAINING ORDER**

MAY IT PLEASE THE COURT:

Jane Cross and Jerry Rivera, Plaintiffs hereinafter, file their Original Petition complaining of Rene Gutierrez and the Edinburg Independent School District (District), and would respectfully show the Honorable Court the following in support thereof:

Discovery

Discovery under this petition is requested to be conducted under Level 2 of Tex.R.Civ.P. 190.4.

Parties

Plaintiffs are individual, taxpayers of the Edinburg Consolidated Independent School District residing in Hidalgo County, Texas.

Defendant Rene Gutierrez is an individual and Superintendent of the Edinburg Consolidated Independent School District. Service may be had by personal delivery at his place of employment at 411 N. 8th Ave., Edinburg, Texas.

Defendant, Edinburg Condolitated Independent School District in a governmental entity

CL-19-1591-A

which can be served by serving its board president Robert Pena at 411 N. 8th Ave., Edinburg, Texas.

VENUE

Venue of this lawsuit is proper in Hidalgo County, Texas, by virtue of § 15.001 of the Texas Civil Practice & Remedies Code, because all or a substantial part of the events or omissions giving rise to the claims asserted herein occurred in Hidalgo County, Texas. In addition, all parties reside in Hidalgo County, Texas.

FACTS

Defendant ECISD commissioned and handsomely paid for a study regarding enrollment trends. Such study (Templeton Study, or Study), was presented to the ECISD in the fall of 2018.

The Study measures the enrollment growth of the District which increased 1.4% from 2013 to 2018 (Study pg. 5). The Study, however, also shows that the District has now been losing a tremendous amount of students to other schools. In 2017-2018, a total of Five thousand, two hundred and one (5,201) students transferred out of the District. Students transferring into the District were only 281 (Study pg. 17).

The Study also showed that of the increasing births in the District's area, less children from the area are enrolling into kindergarten. The enrollment ratio of births to enrollment was .933 in 2011-2012 and will be .737 in 2020-2021 (Study pg. 19). Further, the Study finds an overall decrease in student population in both elementary and secondary campuses (Study pgs. 21-22). The District's student population continues to decrease overall in all grade levels.

Knowing the above figures, the District has called for a bond election in the amount of Two Hundred and Twenty million Dollars (\$220,000,000.00). Supposedly the District needs more schools because of overcrowding. Tax payers would be paying for 20-30 years, even

CL-19-1591-A

though the Study clearly shows that the student population is decreasing. The passage of these bonds would mortgage our children's and grandchildren's future.

In an effort to promote the passage of the bonds, Defendant Gutierrez appeared on 710 Talk Show radio promoting the bonds. As Superintendent of ECISD, the Superintendent is the District's representative. It is difficult to differentiate between a Superintendent's official speech from his private speech. Statements by Gutierrez included statement to the effect that hopefully the people will support the bond; the kids deserve it; and we need the facilities. These statements are not just factual in nature, but supportive of the passing of the bonds.

The District is in violation of state law in utilizing public funds for the passage of the bond. The Texas Election Code and Education Code, specifically disallows the usage of public funds to support a measure. The District has prepared and printed brochures advocating the passage of the bond (see exh. "A"). Such brochure clearly violates the statute by using the terms "Trust and Transparency," The brochure depicts the United States flag represented by students wearing red, white and blue shirts. The brochure further states that ECISD "has built trust of the community and a history of responsibly managing previous bonds." Such of course is promotional and subject to varying opinions. The whole History section of the brochure is one sided and placed there for the purpose of making the passage of these new bonds more palatable. This same brochure also states that the life of the new building is considered much longer than the term of the payment of bonds (20-30 years). This would not be surprising as there would be no students utilizing the new schools. This brochure was prepared and printed by the District and is now being disseminated in District grounds.

The District went further and has been utilizing the District's buildings to strategize the passage of the bond. In a clear and blatant violation of the Texas Election Code, administration

CL-19-1591-A

has been utilizing school property and resources to even break down how they purport to get the vote out for the passage of the bond (see Exhibit “B”). Such writing is even broken down into individuals and organizations, all in violation of the Texas Election Code.

The disregard of state law continues. The District is holding presentations throughout the District, of course, using District resources, staff, electricity, equipment, water, air conditioning, and other resources, all in an attempt to convince people of the need of these unnecessary bonds.

All these illegal actions will continue unless this Honorable Court issues and injunction to stop them.

TEXAS ELECTION CODE, SEC. 273.081.

Plaintiffs hereby incorporate the factual allegations as if wholly set forth herein. A person who is being harmed or is in danger of being harmed by a violation or threatened violation of this code is entitled to appropriate injunctive relief to prevent the violation from continuing or occurring.

Based on information and belief, school administrators during working hours have been contacting parents to assist in the registering of parents to vote in the upcoming election. Even though they are not specifically stating as such, the Defendant’s purpose of such registration is for the helping of the passage of the subject bond.

DECLARATORY JUDGMENT ACTION

Plaintiffs hereby incorporate the factual allegations as if wholly set forth herein. Plaintiffs ask the Court to declare that the attached communications and actions are illegal, invalid and contrary to ethical rules and policies. Plaintiffs are seeking reasonable and necessary attorney’s fees under Section 37.009 of the Texas Civil Practice and Remedies Code including all costs of

CL-19-1591-A

suit.

ELEMENTS FOR INJUNCTIVE RELIEF

Plaintiffs hereby incorporate the factual allegations as if wholly set forth herein. In light of the above described facts, Plaintiffs seeks recovery from Defendant. The nature of the lawsuit is declaratory in nature and for the purposed of stopping an illegal act.

Plaintiffs are likely to succeed on the merits of this lawsuit because an illegal act cannot be made legal and Plaintiffs' exhibits clearly show Defendants being a proponent for the passage of the bond.

Unless this Honorable Court immediately restrains Defendants, Plaintiffs and persons in similar standing will suffer immediate and irreparable injury, for which there is no adequate remedy at law to give Plaintiffs complete, final and equal relief. More specifically, Plaintiffs will show the court the following:

- A. The harm to Plaintiffs is imminent and is occurring to date.
- B. This imminent harm will cause Plaintiffs irreparable injury in that damages to Plaintiffs and others in similar situation, specifically taxpayers of Edinburg Consolidated Independent School District as there is no cause of action to recall a bond election.
- C. There is no adequate remedy at law which will give Plaintiffs complete, final and equal relief because there is no civil cause of action against Defendant. The ramifications of Defendant and its agents and employees acts are illegal and Plaintiffs' have a statutory right to such injunction and a showing of no adequate remedy is not necessary.

CL-19-1591-A

REMEDY

Plaintiffs have met Plaintiffs' burden by establishing each element which must be present before injunctive relief can be granted by this court, therefore Plaintiffs are entitled to the requested temporary injunction.

Plaintiffs request the court for a temporary injunction to restrain Defendants from violating political ethical rules and mispending public funds by advocating for the passage of the bond.

It is essential that the court immediately and temporarily restrain Defendants and their agents. It is essential that the court act immediately on this matter because the early voting period is about to begin.

Plaintiffs request that a permanent injunction after a trial on the merits of the case.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, respectfully pray that:

- A. Defendants be cited to appear and answer herein;
- B. A temporary injunction order will issue to Defendants, restraining Defendants, Defendants' officers, agents, servants, employees, agents, servants, successors and assigns, and attorneys from directly or indirectly violating ethical rules and mispending public funds;
- C. That the Defendant resources and equipment not be used to create political propaganda;
- C. The Court sets a reasonable bond for the temporary injunction order;
- D. After hearing, a temporary injunction will issue enjoining and restraining Defendants, Defendants' officers, agents, servants, employees, successors and assigns, and attorneys from directly or indirectly violating ethical rules and mispending public funds;

CL-19-1591-A

E. For reasonable attorney fees and damages within the minimum jurisdiction of this court and further relief, in law or in equity, to which Plaintiffs may be justly entitled.

Respectfully submitted,

Law Office of Javier Villalobos, P.C.

By: /s/Javier Villalobos

State Bar No: 00794793

5804 N. 23rd Street

McAllen, Texas 78504

Phone: (956) 687-4000

Facsimile: (956) 687-4001

Email: jv@jvlawoffice.com

Email: af@jvlawoffice.com (assistant)

ATTORNEY FOR PLAINTIFFS